IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3184 OF 2004
IN
CRIMINAL APPEAL NO. OF 2004

Balbhim Nivrutti Suryavanshi ..Appellant.

V/s

Girish Singh and Anr. ..Respondents.

Mr. Shailesh Shukla & A.K. Moily, advocates for the applicant.

Mr. V.V. Shrivastava, advocate for respondent No.1.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 10th February, 2005

P.C.

1. Leave granted.

2. Appeal is taken up for hearing forthwith.

3. Heard the learned Counsel appearing on behalf of the applicant and the learned Counsel appearing on behalf of respondent No.1.

4. This is an appeal filed by the original complainant challenging the order of the Metropolitan Magistrate who has dismissed the complaint for want of prosecution by order dated 3/7/2003.

5. It is submitted by the learned counsel appearing on behalf of the appellant that the complainant was diligent and had appeared before the Metropolitan Magistrate regularly. He submits that he was absent on the said date as he was not informed about the date before the Metropolitan Magistrate by his counsel. He submits that the Trial court ought to have given an opportunity to the complainant to pursue his complaint. It is submitted that the Trial Court also has incorrectly recorded that the case is of 1999 when, in fact, the complaint was filed in 2001. It is submitted that there is total non-application of mind on the part of the Metropolitan Magistrate.

6. The learned Counsel appearing on behalf of respondent No.1 has vehemently opposed the submissions made by the learned Counsel appearing for the appellant. She has brought to my notice from the roznama that the complainant was absent on 26/12/2002 and that he was also absent on 24/4/2003. She submitted that the complainant was absent continuously on three dates and, therefore, the Trial Court had dismissed the complaint for want of prosecution. She, therefore, submitted that there is no reason to interfere with the said order.

7. Considering the peculiar facts and circumstances of the case and having perused the roznama from which it can be seen that the complainant had appeared before the Metropolitan Magistrate on number of dates, in my view, this is a fit case for restoring the Criminal Complaint. The impugned order is accordingly set aside. The Criminal Complaint is restored to the file. Appellant shall, however, pay costs to the respondent No.1 which is quantified at Rs 1500/-. The Trial Court is directed to decide the complaint on merits as expeditiously as possible. Both the parties are expected to cooperate with the Trial Court.

8. Appeal is accordingly disposed of.

V.M. KANADE, J.